

**Motor Carrier Group Chairman's Factual Report
HWY-05-MH035**

Attachment #25: CVSA Petition
(6 Pages)

Commercial Vehicle Safety Alliance



**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**PETITION TO AMEND 49 CFR PART 391 TO FACILITATE
ADEQUATE LANGUAGE PROFICIENCY FOR COMMERCIAL
DRIVERS**

Submitted on behalf of

COMMERCIAL VEHICLE SAFETY ALLIANCE

September 10, 2003

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The Commercial Vehicle Safety Alliance submits the following Petition pursuant to Section 389.31 of Title 49, Code of Federal Regulations. Petitioner requests that FMCSA amend §391.11(b)(2) of the Federal Motor Carrier Safety Regulations to provide appropriate means for industry and enforcement to operate safely on the highways and during roadside inspection stops. This issue is discussed in Sections II and II below.

I. IDENTIFICATION OF PETITIONER

Established in 1981, the Commercial Vehicle Safety Alliance (CVSA) works to improve commercial vehicle safety on the highways by bringing federal, state, and provincial truck and bus safety enforcement agencies together with representatives from industry in the United States, Canada, and Mexico. Every state in the U.S., all Canadian provinces, the country of Mexico, and all U.S. Territories and Possessions are members of CVSA.

II. BACKGROUND

This petition is being submitted to FMCSA in response to an action requested by CVSA's Executive Committee at its Toronto meeting on April 17, 2003. The directive was to petition FMCSA to amend 49 CFR 391.11 to more accurately reflect the NAFTA requirements for communication.

This issue has taken on added importance since the FMCSA recently decided to close the open rulemaking action it had on the subject (ANPRM issued in 1997, Docket No. FHWA-1997-2759). Thus, we feel compelled to continue to share our concern on this issue and provide a recommendation to the Agency.

In early 2001, the issues surrounding implementation of the North American Free Trade Agreement came into sharper focus. Since that time, there have been a number of actions taken by the U.S. Congress, the federal, state and provincial governments of Mexico, Canada and the U.S., and by industry to help prepare for President Bush's lifting of the NAFTA moratorium put in place by President Clinton and opening the borders. However, at this point in time, the border remains closed due to a 9th Circuit Court Ruling.

One problem that remains, although it is not directly tied to NAFTA, has surfaced as a major safety concern. That problem is language proficiency of commercial drivers. Both highway and officer safety are at issue. There have been instances where the inability of commercial drivers to adequately communicate with and understand officer instructions has compromised the inspection process, and in some cases has resulted in injuries to inspectors. Additionally, there have been instances where this has compromised highway safety. This problem came to the forefront when on July 8, 2003 in Slippery Rock, PA a truck driver from Utah drove through a stop sign and killed 5 people - he did not speak English.

An important item to note is that this issue is not necessarily specific to operators from Canada or Mexico, rather, it is with new residents to the United States. There are many immigrants from all parts of the globe who come to the United States and seek employment in the truck and bus industry. These are the predominant commercial drivers that are seen as having difficulty speaking the English language.

On January 28, 2002, CVSA submitted a letter to FMCSA asking for assistance to help clarify 49 CFR 391.11(b)(2) that states each driver is qualified to drive a commercial motor vehicle if he/she *"can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records."* In this letter we asked Federal Motor Carrier Safety Administration to convene a working group to develop clear and concise policy direction to roadside law enforcement personnel on how to address this regulation in the field, we offered CVSA's assistance in this effort.

During the past several CVSA meetings, this issue has been deliberated at length in several committees, including Driver-Traffic Enforcement, International, Legal & Regulatory Affairs, and the Executive Committee. In fact, at the 2002 CVSA Spring Workshop in Rapid City, SD the Driver-Traffic Enforcement Committee voted to adopt language proficiency into the North American Standard Out of Service Criteria, and it was brought before the Executive Committee for a vote. The Executive Committee voted it down, directing the Driver-Traffic Enforcement and International, Legal and Regulatory Affairs Committees to do additional research.

The Committees were asked to gather any additional data or evidence to help understand the magnitude of the problem, and, determine whether there were any documented instances in the jurisdictions. As a part of this effort, a survey was developed and issued to the membership for input and comment.

At the 2002 Fall Workshop in Boston, all three Committees again discussed this issue at length. Taking into account the survey responses, committee deliberations and the lack of evidence produced by the jurisdictions, the Executive Committee made the following decision:

"CVSA is to investigate translation services and collect materials from Federal and State sources regarding language translations that could be used during inspections. Once collected, a 'best practices' policy statement and a 'tool box' for inspectors are to be developed and disseminated."

In November 2002, we sent a Memorandum to the CVSA member jurisdictions requesting they send any pertinent information and materials to CVSA Headquarters. This information has been collated and consolidated for the International, Legal & Regulatory Affairs and Driver-Traffic Enforcement Committees to deliberate and take action on, as requested by the Executive Committee. We are currently working with

JJKeller to produce a multi-lingual guide for roadside inspectors and drivers to assist in the inspection process and with basic communication needs.

III. OPTIONS

We believe the Agency has five options, or some combination thereof, to consider for dealing with this problem:

1. Remove the regulation §391.11(b)(2). As written it is vague and open to interpretation, thus making it difficult to comply with and enforce;
2. Work with CVSA to develop a standard test procedure for law enforcement to administer in determining whether the commercial driver meets a minimum standard for communication, as well as to provide assistance in the development of educational materials for industry and enforcement;
3. Revise the regulation §391.11(b)(2) to reflect the NAFTA requirements for communication. Specifically, in April 1995 the Land Transportation Standards Subcommittee (LTSS1) in furtherance of Articles 906 and 913(5)(a)(i) of the North American Free Trade Agreement passed a resolution regarding language proficiency. The resolution states, in part, *"That in recognition of the three countries language differences it is the responsibility of the driver and the motor carrier to be able to communicate in the country in which the driver/carrier is operating so that safety is not compromised."* In Canada, this has manifested itself into a policy resolution enacted in January 2003 by the Canadian Council of Motor Transport Administrators which replicates the exact statement enumerated above;
4. Revise the Commercial Drivers Licensing requirements (and the commensurate enforcement) to be consistent with §391.11(b)(2); and/or
5. Status quo.

Our recommendation is to implement options 2 and 3. It is our view that this problem will not go away. In fact, it will become more of a safety issue in the future. Thus, we need to implement a strategy now. CVSA also believes that the American Association of Motor Vehicle Administrators can and should play a key role in this effort, as identified in option 4 above. Another piece of the strategy is to ensure that a driver does not get licensed until they have demonstrated basic competency skills before they obtain their commercial license.

In support of our petition, Attachment A includes a number of items to help substantiate the problem. Many of them are e-mail responses and other communications that have been sent to us from our members in support of the work conducted by the Driver Committee. Others are information shared among the CVEO Yahoo Group on this issue.

We also believe support for our position and recommendations is contained in the April 21, 2001 United States Supreme Court Decision (JAMES ALEXANDER, DIRECTOR, ALABAMA DEPARTMENT OF PUBLIC SAFETY, et al., v. MARTHA SANDOVAL.) Additionally, other professions requiring licensed practitioners in the health and safety fields have requirements related to speaking the English language and the administration of a proficiency examination (i.e. Doctors, Justice/Immigration, etc.)

We strongly encourage the Agency to take on this problem before more persons are injured or killed. We continue to offer our support for assisting with this difficult issue.

Respectfully submitted,

A handwritten signature in black ink that reads "Stephen F. Campbell". The signature is written in a cursive style with a large, prominent "S" at the beginning.

Stephen F. Campbell
Executive Director